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 COMMISSION TO REVISE THE ANNOTATED CODE

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January 27, 1984

REPORT ON SENATE BILL 50

STATE GOVERNMENT ARTICLE

I. PURPOSE AND SCOPE OF CODE REVISION.

The proposed State Government Article (Senate Bill 50) is a product of the continuing revision of the Annotated Code of Maryland undertaken by the Commission to Revise the Annotated Code. The revision process was inaugurated during the First Extraordinary Session of 1973 and to date has resulted in the enactment of 13 new major articles: Agriculture, Commercial Law, Corporations and Associations, Courts and Judicial Proceedings, Education, Estates and Trusts, Financial Institutions, Health-Environmental, Health-General, Health Occupations, Natural Resources, Real Property, and Transportation.

Each of these articles represents a formal bulk revision as mandated by the guidelines established in 1970, including improved organization, elimination of obsolete or unconstitutional provisions, resolution of inconsistencies and conflicts in the law, correction of inadvertent gaps or omissions in the law, deletion of repetitive or otherwise superfluous

language, and general improvement of language and expression.

The same guidelines have been followed in the preparation of the State Government Article.

The basic thrust of the Commission's work is formal; the primary purpose of its work is modernization and clarification, not policy making. Nevertheless, at some points in its work, the Commission finds it necessary to recommend changes that address the substance of the law. The Commission has made every effort to ensure that these recommended changes conform as nearly as possible to the intent of the General Assembly. Issues involving fundamental policy are also noted. Since the resolution of these issues is beyond the purview of the revision process, the Commission has made no attempt to resolve them other than by calling them to the attention of the General Assembly for possible action. The significant issues in both of these categories are addressed in this report.

The general rule of construction the courts apply to a bulk revision was stated in Welch v. Humphrey, 200 Md. 410, 417 (1952):

"It is true that a codification of previously enacted legislation, eliminating repealed laws and systematically arranging the laws by subject matter, becomes an official Code when adopted by the Legislature, and, since it constitutes the latest expression of the legislative will, it controls over all previous expressions on the subject, if the Legislature so provides. However, the principal function of a Code is to reorganize the statutes and state them in simpler form. Consequently any changes made in them by a Code are presumed to be for the purpose of clarity rather than change of meaning. Therefore, even a change in the phraseology of a statute by a codification thereof will not ordinarily modify the law, unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code."

See also Bureau of Mines v. George's Creek Coal and Land Co., 272 Md. 143, (1974); Baltimore Tank Lines v. Public Service Commission, 215 Md. 125 (1957); Welsh v. Kuntz, 196 Md. 86 (1950); Crow v. Hubard, 62 Md. 560 (1884); and Matter of Anderson, 20 Md. App. 31 (1974).

II. FORM, CONTENTS, AND ORGANIZATION.

The proposed State Government Article conforms to the organization, form, and numbering system used in the previously

revised articles. Accordingly, the article will be published in a separate, unnumbered volume and will be cited by name. See Art. 1, § 25 of the Code.

The State Government and Family Law Articles are the fifth and sixth articles revised by the Commission using language that is neutral as to gender.

The proposed State Government Article includes substantially all provisions of the public general law relating to statutory provisions for the essential functions of the State government, including the Legislative Branch, the Governor and other Constitutional officers, miscellaneous executive agencies, the present Administrative Procedure Act and State Documents Laws, meetings, record-keeping, State immunity and liability, State emblems and acquisition of federal land. The proposed article replaces Arts. 32A, 40, 76, 76A, 88D, 95C, and 96 of the Code in their entirety. It also replaces parts of Arts. 19, 41, 54, 65, 78A, 95, and 96 1/2 and the Courts Article.

The proposed State Government Article is divided into 14 titles. Title 1 contains definitions. Each of the remaining 13 titles covers a different broad subject area.

In Senate Bill 50, the statutory text of the proposed State Government Article is printed in all capital letters as though it were entirely new material. However, in many instances, comparisons of the present law with the revised law will reveal that the proposed changes are merely minor stylistic improvements.

Each section -- or, in some instances, subsection -- of the proposed article is followed by a revisor's note that explains all significant changes made in the revision process. These notes also provide a link between the revised law and the law it replaces by explaining, in detail, the relationship of the old and the new.

The revisor's notes, although not part of the law, serve an important function in preserving the intent and substance of the present or "source" law. In Murray v. State, 27 Md. App. 404 (1975), the Court of Special Appeals recognized the importance of revisor's notes not only as a statement of the revisor's intent, but as a statement of legislative intent as well:

"These notes were part of the legislation enacting the revisions explaining to the legislators not only what changes were effected but what their expressed intention was in changing the wording." Murray v. State, 27 Md. App. at 409 (Emphasis in original).

Because of their importance as recognizable elements of

legislative history, the revisor's notes in the third reading file bill will be changed from those in the first reading file bill as little as practicable. Additional minor changes may also be made in them before publication by The Michie Company.

III. PREPARATION OF THE STATE GOVERNMENT ARTICLE.

Each title or subtitle of the proposed State Government Article was prepared initially by the Commission's staff. Elizabeth Buckler Veronis was the article supervisor. Other staff members who drafted portions of the article were Jean Bienemann, Lawrence Chambers, Leslie D. Gradet, Theodore E. King, Jr., Donovan Peeters, and several former staff members and Commission Director Geoffrey D. Cant. Additional staff members whose efforts contributed to the article were Deborah Cox, Phyllis Helmick-Lindsay, Harry Hendrickson, Earline Johnson, Lynette Johnson, Marie Marangoni, and Sherry Little.

As each draft portion of the State Government Article was completed, it was presented to and thoroughly reviewed by the Commission's State Government Committee, chaired by Alan M. Wilner. Other members of the Committee included: Avery Aisenstark, Bruce C. Bereano, Carl E. Eastwick, Judson P. Garrett, Jr., Thomas J. Peddicord, Jr., Thomas E. Plank, and Jack C. Tranter..

Following extensive review and approval by the State Government Committee, the drafts were submitted to the full Commission for further detailed review and ultimate Commission approval.

In preparing the proposed State Government Article, the Commission, the State Government Committee, and the Commission's staff received help from numerous assistant attorneys general, officials of State agencies, and representatives of the Maryland State Bar Association. These individuals explained provisions, advised as to administrative procedures, provided valuable insights, reviewed drafts, and attended Committee and Commission meetings, where they made significant contributions. The Commission, the State Government Committee, and the Commission's staff are deeply indebted to: Melvin A. Steinberg, Benjamin L. Cardin, J. Basil Wisner, Edwin J. Schamel, Thomas A. Cassidy, William S. Ratchford, F. Carvel Payne, Mary F. Atwell, Robert J. Colborn, Jr., Martin M. Puncke, Edward C. Papenfuse, Allan B. Blumberg, Claude L. Callegary, John F. McNulty, Dennis M. Sweeney, Judith A. Arnold, and Guy W. Hager.

During the summer and fall of 1983, this article was given intensive review by the Senate Constitutional and Public Law Committee and the House Constitutional and Administrative Law Committee, meeting jointly. In addition, the House Judiciary Committee reviewed Title 12 -- Immunity and Liability. The bill

presented to the General Assembly reflects not only the helpful suggestions made by members of these committees, but also their considered judgment on the many specific issues that were raised by the Commission.

Comments also were offered by the Joint Budget and Audit Committee and the Joint Committee on Federal Relations.

IV. NECESSARY MODIFICATION AND CHANGE.

The following discussion provides a representative cross-section of the changes proposed by the Commission as part of the State Government Article. Because of practical space limitations in the revisor's notes, the following descriptions are more detailed than those that appear in the revisor's notes in Senate Bill 50. In addition, some of the essentially routine changes exemplified below are made elsewhere in the State Government Article but are not detailed in this report, in the interest of brevity.

A. UNNECESSARY PROVISIONS.

Some existing statutory language is plainly unnecessary. Examples of such language include seldom used definitions, severability provisions, and provisions that are redundant of other, more general provisions.

Present Art. 41, § 483(a)(2) is an example of an unnecessary definition. The paragraph defines "[d]isadvantaged person" for purposes of that section, but only the defined word, and the similar words "[t]he disadvantage" appear once each, in another definition. The 2 definitions are combined, in SG § 9-301(c), as a single defined term.

Present Art. 88D, § 22, a typical severability provision, provides for the severability of Art. 88D, if any of its provisions is held invalid. Art. 1, § 23 of the Code provides that any statute enacted after July 1, 1973, is severable unless the statute specifically provides otherwise. Since the proposed State Government Article will be enacted after July 1, 1973, and since there is no provision in the State Government Article providing that the proposed article is not severable, there is no need for a severability provision in that article. Therefore, present Art. 88D, § 22 is deleted.

Present Art. 19, § 2 contains an example of a redundant provision. It provides, in part, that a certified copy of the surety bond of the Comptroller "may be used in evidence in any court in this State". Since § 10-204 of the Courts Article provides for the admissibility of a certified copy of any public record, the redundant part of present Art. 19, § 2 is deleted, in the revisor's note to SG § 4-102 with the explanation that it is

"unnecessary in light of CJ § 10-204, which provides generally for the use of certified copies of public records".

B. OBSOLETE PROVISIONS.

Some statutory language becomes obsolete with the passage of time.

A common example of such language is a reference to an agency or title that has been eliminated or had its name changed through reorganization. For example, present Art. 41, §§ 153 and 154 refer to the "Commissioners for Uniform State Laws", "the Commissioners for the Promotion of Uniformity of Legislation in the United States", and the "Board of Commissioners". The revision uses the single term "Commission on Uniform State Laws". See the revisor's note to SG § 9-203

References to now past dates by which actions were required to be completed are also deleted as obsolete if, in fact, the action has been completed. For example, present Art. 41, § 486(d) requires the Department of Fiscal Services to evaluate certain units before July 1, 1983. Since July 1, 1983 is obsolete, SG § 8-403(d) requires evaluation on or before July 1, 1993.

C. AMBIGUOUS PROVISIONS.

Some existing statutory language is potentially troublesome because it is ambiguous. When the Commission encounters such language, the Commission attempts to resolve the ambiguity by applying well-established rules of statutory construction to determine what the General Assembly intended.

For example, present Art. 40, § 40A(e)(3) confers on the Joint Committee on Administrative, Executive, and Legislative Review the "same powers as are given the Legislative Policy Committee" in present Art. 40, § 30. Present Art. 40, § 93 similarly confers these "powers" on the Joint Committee on the Management of Public Funds.

The reliance on cross-references created several ambiguities as to the scope of authority conferred by present Art. 40, §§ 40A(e)(3) and 93.

To avoid these problems, SG §§ 2-507 and 2-807 repeat, for the Joint Committee on Administrative, Executive, and Legislative Review and for the Joint Committee on the Management of Public Funds, those provisions of present Art. 40, § 30 that the Commission believes were intended to be applicable to the Joint Committees.

Under present § 30 the Legislative Policy Committee, and,

with its approval, standing committees may issue subpoenas and generally obtain evidence, under oath. The Legislative Policy Committee and standing committees also may seek judicial enforcement of these powers.

It is unclear whether, e.g., present Art. 40, §§ 40A(e)(3) and 93 enable the Joint Committees to issue subpoenas, but only with the prior approval of Legislative Policy Committee, or, conversely, enable the Joint Committees to give approval for the issuance of subpoenas by standing committees.

A leading indicator of legislative intent is actual administrative practice. See State Commission on Human Relations v. Baltimore County, 46 Md. App. 45, 58 (1980); see also Public Service Commission v. Howard Research & Development Corp., 271 Md. 141, 152 (1974). Thus, the Commission concluded that, since the Joint Committees neither seek prior approval from the Legislative Policy Committee nor grant prior approval to standing committees, these elements should not be included in SG §§ 2-507 and 2-807.

The Commission also concluded that the word "pove[r]" could not encompass the third sentence of present Art. 40, § 30, which provides that false swearing is perjury.

D. GAPS AND OMISSIONS.

Occasionally, the Commission encounters gaps in the existing law created by unintentional omissions and fills them in a manner consistent with the apparent legislative intent. For example, present Art. 49D, § 6 states that "[s]ubject to the evaluation and reestablishment provisions of the Program Evaluation Act", the State Office for Children and Youth terminates on July 1, 1994. However, the law does not provide for evaluation under the referenced Act. Recognizing that this omission clearly was inadvertent, the Commission added, in SG § 8-403(d)(4), an express provision for evaluation of the Office.

V. GENERAL ISSUES.

A. GOVERNMENTAL UNITS.

The present law contains numerous lists such as "departments, boards, commissions and other units" or uses terms such as "State agencies" to encompass the listed entities. Throughout the State Government Article, the word "unit" is substituted as a general term for a governmental organization. See the General Revisor's Note to Article, in lines 34 through 39 on page 475.

B. REGULATIONS.

The Code currently uses the terms "regulation" and "rule" and combinations of the terms.

The Administrative Procedure Act and, by reference, the State Document Law define "rule". See present Art. 41, §§ 244(c) and 256B(f). Nonetheless, "rule" is defined to include "regulation" and both terms appear in the Act and Law.

It has been the practice of the Division of State Documents to use "rule" with respect to judicial and legislative units and "regulation" for other units.

To the extent possible, the Commission conformed to this practice. Thus, in SG §§ 7-201 and 10-101, the word "regulation" is substituted, as the defined term, for "rule".

Throughout the balance of the article, the word "regulation" is substituted for "rule" or "rules and regulations", in the context of units of the Executive Branch. The term "rule" appears in the context of legislative or judicial rules.

VI. DISCUSSION OF STATE GOVERNMENT ARTICLE.

A. TITLE 1 -- DEFINITIONS.

As in other revised articles, Title 1 of the State Government Article contains definitions that apply throughout the article. The 4 defined terms that appear in SG § 1-101 -- "county", "includes"; "including", "person", and "State" -- appear in all of the recently revised articles.

B. TITLE 2 -- GENERAL ASSEMBLY.

1. General Comments.

Title 2 of the State Government Article is derived primarily from Arts. 40 and 76 and from provisions of present Art. 41 that relate to legislation.

Much of the law that relates to the General Assembly members is found in the Constitution and in the Senate and House Rules. Title 2 of the State Government Article contains the statutory law with respect to the General Assembly, its members and committees, its staff agencies, and its functions of legislating and investigating.

2. Subtitle 1 -- Definitions.

Title 2, Subtitle 1 contains 4 new definitions added to allow concise reference to the 2 chambers of the General Assembly and their presiding officers.

Title 2, Subtitle 1 also contains a definition of "standing committee", which is derived from a substantive provision and is restated, as a definition, to clarify present references to a "standing committee" that are not modified by reference to the Senate and House Rules.

3. Subtitle 2 -- Legislative Districting Plan of 1982.

Title 2, Subtitle 2, appearing on page 13, is reserved for the Legislative Districting Plan. That Plan currently is codified in Art. 40, §§ 46 through 47C of the Code.

The present sections are transferred to Subtitle 2 by the function paragraph on page 2, in lines 35 through 45, and the corresponding enacting clause on page 476, in lines 28 through 33.

4. Subtitle 3 -- Legislative Compensation.

Title 2, Subtitle 3 is reserved so that the provisions for legislative compensation may be codified on adoption of the next resolution.

5. Subtitle 4 -- Legislative Policy Committee.

Title 2, Subtitle 4 contains the statutes that relate to the members, officers, meetings, staff and general functions and powers of the Legislative Policy Committee. However, certain specific responsibilities are not included in this subtitle. See, e.g., SG § 2-1008.

The Commission noted that the membership of the Legislative Policy Committee includes 7 appointed members and that the statute is silent as to the tenure of these members.

Present Art. 40, § 27(c) provides that, while the General Assembly is not in session, a vacancy among the appointed members be filled "in accordance with the provisions of [present Art. 40, § 27] (a)". In SG § 2-405(c), this requirement is deleted since the referenced provisions require ratification of an appointment by the Senate or the House. As noted in lines 34 through 41 and lines 1 and 2 on pages 16 and 17, the President and the Speaker indicated that there was no intent to require ratification during the interim.

Present Art. 40, §§ 28(1) and 29(2) and (3) contain references to referrals of matters for study. These provisions are combined in SG § 2-407(b)(4). See lines 35 through 40 and 1 through 9 on pages 19 and 20.

Present Art. 40, § 28(2), which requires compilation of the reports from standing committees, is combined with present Art.

40, § 37, which relates to reports of standing, special, and statutory committees.

Present Art. 40, §§ 30 and 34 apply both to the Legislative Policy Committee and to the standing committees. These present sections are revised so that the parts applicable to the Legislative Policy Committee appear in Title 2, Subtitle 4, while the parts applicable to the standing committees appear in Title 2, Subtitle 11, which contains other provisions applicable to those committees.

Present Art. 40, § 34(2) requires officers and units of all 3 branches of the State government to submit to the Legislative Policy Committee recommendations that are to be submitted to the General Assembly. The Commission retained this requirement in SG § 2-410, but noted that the language is sufficiently broad to encompass, e.g., budget recommendations. Separate legislation addresses this substantive issue.

Present Art. 40, § 35 is revised, in SG § 2-406(a)(1) and (2) to clarify the required quorum and required majority. See lines 33 through 39 and 1 through 15 on pages 17 and 18.

As revised, SG § 2-406(a)(2) also clarifies the scope of matters to which the required majority applies, by the deletion of the present, nebulous word "substantive". See lines 16 through 22 on page 18.

Present Art. 40, § 38 enables the Legislative Policy Committee to accept gifts or grants of money and authorizes expenditure of the money. The present law specifically refers to the "budget amendment" process. In SG § 2-407(b)(7)(ii), this reference is deleted. The general laws as to the budget process apply, but specific reference to that process in 1 law suggests that, absent a reference, the process does not apply. See lines 42 through 48 and 1 and 2 on pages 20 and 21.

6. Subtitle 5 -- Joint Committee on Administrative, Executive, and Legislative Review.

Title 2, Subtitle 5 contains the statutes that relate to the members, officers, meetings, staff, and general functions and powers of the Joint Committee on Administrative, Executive, and Legislative Review. However, certain specific responsibilities of the Committee with respect to adoption of regulations appear in Title 10, Subtitle 1.

Present Art. 40, § 40A(b)(2) is revised in SG § 2-503(b) as 2 paragraphs, to clarify that the requirements for proportional representation among the members apply to the Senate members and the House members separately, since the President and the Speaker appoint those members separately. See lines 1 through 8 on page

Present Art. 40, § 40A(c)(2) requires the Joint Committee on Administrative, Executive, and Legislative Review to review regulations "adopted and promulgated" by units of the Executive Branch of the State government. SG § 2-506, as revised, specifically refers to the Committee's responsibilities with respect to proposed regulations. In SG § 2-506(a)(1) and (2), the Committee specifically is enabled to review "proposed" regulations and to consider requests in connection with emergency adoption of a regulation.

Conversely, present Art. 40, § 40A(h) addresses the effect of the Committee's inaction on a proposed regulation but, by failure to mention adopted regulations, suggests that inaction has an effect. This implication seemed unintended and is avoided by the addition of a reference to an "adopted" regulation. See lines 16 through 20 and 30 through 46 on page 27 and lines 1 and 2 on page 28.

Note that the derivation of SG § 2-507 is discussed extensively in Part IV. C. of this report.

7. Subtitle 6 -- Joint Budget and Audit Committee.

Title 2, Subtitle 6 contains the statutes that relate to the members, officers, meetings, and general functions and powers of the Joint Budget and Audit Committee.

However, this Act temporarily transfers present Art. 40, § 56B to Art. 15A of the Code, in anticipation of the revision of that section in the State Finance and Procurement Article, with other provisions on capital construction.

Present Art. 40, § 55(e) provides for adoption of rules as to attendance and perseverance by members of the Joint Budget and Audit Committee. As revised in SG § 2-603(d)(2), the removal provision is limited to "appointed" members, to avoid the suggestion that removal of a member from the Joint Budget and Audit Committee also could effect the removal of an ex officio member from another position. See lines 7 through 14 on page 32.

Note, however, that the Commission was advised that rules have not been adopted, and, therefore, a separate measure has been prepared to delete this inoperative provision.

Present Art. 40, § 56 contains a statement of the general responsibilities of the Joint Budget and Audit Committees. The Commission noted that SG § 2-606(a)(1) and (2) contain the broadest possible construction of present Art. 40, § 56, so that, e.g., the reference to "budget analysis" is not merely an example of a function of the Department of Fiscal Services over which the

Joint Budget and Audit Committee exercises oversight.

It appears that the revision reflects the original intent in enactment of present Art. 40, § 56, but § 56 predates the laws continuing the standing committees. Therefore, those responsibilities now are exercised by the standing committees. Therefore, separate legislation would eliminate SG § 2-606(a)(1).

8. Subtitle 7 -- Joint Committee on Legislative Ethics.

Title 2, Subtitle 7 contains the statutes that relate to the members, officers, and meetings of the Joint Committee on Legislative Ethics. The subtitle also contains the responsibilities as to rulemaking, advisory opinions, referrals, and reports. However, the subtitle does not include the specific responsibilities of this Committee under Art. 40A of the Code.

9. Subtitle 8 -- Joint Committee on the Management of Public Funds.

Title 2, Subtitle 8 contains the statutes that relate to the members, officers, meetings, and functions of the Joint Committee on the Management of Public Funds.

The Commission noted that the present law is silent as to the quorum requirements. Separate legislation addresses this gap.

The first sentence of present Art. 40, § 93 provides for the times at which the Committee meets. SG § 2-805, as revised, also provides for "places". See lines 19 and 20 on page 39.

The third sentence of present Art. 40, § 93, which relates to investigatory powers, has been discussed extensively in Part IV. C of this report.

10. Subtitle 9 -- Federal Relations.

Title 2, Subtitle 9 contains the statutes that relate to the members, officers, staff, and duties of the Joint Committee on Federal Relations and to the members and duties of the Advisory Commission on Federal-Local Relations.

11. Subtitle 10 -- Spending Affordability.

Title 2, Subtitle 10 contains the statutes that relate to the spending affordability program. This subtitle includes the provisions for a Spending Affordability Committee and its advisory committee.

12. Subtitle 11 -- Miscellaneous Provisions on Committees.

The first section of Title 2, Subtitle 11 relates to the general responsibilities of the presiding officers with respect to the members of the committees of the General Assembly. The other 4 sections relate to standing committees.

Subtitle 11 is derived from provisions that currently appear in the present Art. 40 subtitle on the Legislative Policy Committee.

13. Subtitle 12 -- Staff and Services -- Department of Fiscal Services.

Title 2, Subtitle 12 contains the statutes that relate to the organization and general authority of the Department of Fiscal Services and of its 3 Divisions.

Subtitle 12 is divided into 5 parts.

Part I contains a definition section, which defines terms applicable throughout the subtitle.

Part II establishes the Department. This Part provides for the position of Director and describes the general responsibilities of that position.

Part II also contains general provisions as to the staff and facilities of the Department.

These provisions include a statement that the positions are unclassified. However, Ch. 818, § 2 of the Acts of the General Assembly of 1982 enabled individuals to retain their existing, classified positions. That provision is expressly recognized in lines 26 through 28 on page 537 of Senate Bill 50.

Part III contains the statutory provisions that relate to the Division of Audits, including provisions as to specific professional employees of the Division.

Part III also includes the generally applicable provisions as to audits. Note, however, that provisions as to audits of specific entities still appear throughout the Code. See e.g., SG § 9-121, which relates to audits of the State Lottery Agency.

Under present Art. 40, §§ 61B(a) and 61D, the Division is required to audit State units and authorized to audit county units and officers, corporations, and associations.

Present Art. 40, § 61B(a)(2) refers specifically to audits of "county commissioners ... and tax collectors ... in relation to the collection of State taxes". In SG § 2-1215(c), reference to a "county officer or unit that collects State taxes" is substituted for the partially obsolete list. See lines 38

through 42 on page 63.

Present Art. 40, § 61B(e), which relates to the duties of the Comptroller to ensure compliance, is now included with Art. 19, § 29 of the Code, which similarly relates to compliance. These provisions will be revised in the State Finance and Procurement Article. See lines 35 through 44 and 1 through 44 on pages 529 and 530.

Present Art. 40, § 61E makes it a criminal offense for a person "subject to orders ... issued by" the Joint Budget and Audit Committee to refuse knowingly to comply. This provision is proposed for deletion, since the authority for the Committee to issue orders was repealed by Ch. 604, Acts of 1980.

Subtitle 12, Part IV contains the statutory provisions that relate to the Division of Budget Review. It also includes provisions as to specific professional staff. The duties of the Division are set forth in SG § 2-1228.

Subtitle 12, Part V contains similar provisions for the Division of Fiscal Research.

14. Subtitle 13 -- Staff and Services -- Department of Legislative Reference:

Title 2, Subtitle 13 contains the statutes that relate to the organization and general authority of the Department of Legislative Reference and of 1 of its Divisions.

Subtitle 13 is divided into 3 parts and is similar to Title 2, Subtitle 12.

Thus, Part I contains a definition section.

Part II establishes the Department, provides for the position of Director, describes the general responsibilities of the position, and contains provisions as to the staff and facilities of the Department.

The Commission noted that present Art. 40, § 49 refers to the Department as "solely responsible to the General Assembly" although, under present Art. 40, § 51(a), the Director has specific responsibilities to the Governor and heads of departments. Therefore, in SG § 2-1304(b), the reference "solely responsible" is deleted. However, a separate, substantive measure also addresses this problem.

It was also noted that present Art. 40, § 51(a) states all of the duties as responsibilities of the Director. Separate legislation has been prepared to list these duties as functions of the Department.

The Commission also noted overlapping provisions with respect to committees of the General Assembly in present Art. 40, §§ 32, 33, and 51(a).

Under present Art. 40, § 51(b), the Department must distribute a compilation of public local laws to each senator and to each county delegation. The Department noted that, in fact, distribution is made in accordance with the general procedure for distribution of reports to the General Assembly. Separate legislation would conform this provision and practice.

The provision on distribution of materials to the General Assembly, which currently appear in Art. 40, § 51(d) through (f) are revised, in SG § 2-1312, to clarify that the provisions only apply to publications to be distributed to the General Assembly. See lines 9 through 19 on page 85.

Under present Art. 41, § 82, the Department has primary responsibility for compilation of the laws to be included in the Session Laws. However, municipal corporations and code and charter counties are required to send to the Department certain information. This duty is reflected in SG § 2-1309 by the addition of subsection (a)(4).

Present Art. 41, § 82 also refers to an award of contract for the printing of the session laws. This reference, which is obsolete since a unit of the General Assembly now prints the laws, is addressed in SG § 2-1309(b)(1). See lines 1 through 9 on page 83.

Part of present Art. 19, § 25, which requires the printer to include the Comptroller's statement of receipts and expenditures, also is revised in SG § 2-1309. The balance of Art. 19, § 25 will be revised in the State Finance and Procurement Article. See lines 22 through 33 on page 529.

Subtitle 13, Part III relates to the Division of Statutory Revision and the Revisor of Statutes.

One of the duties of the Revisor, under present Art. 40, § 53C, pertains to "administrative rules and regulations". This reference is clarified, in SG § 2-1318(c)(2)(iii), by substitution of a reference to "regulations of units of the Executive Branch". See lines 12 through 23 on page 89.

As with the staff of the Department of Fiscal Services, classified employees of the Department of Legislative Reference also were covered by Ch. 818, § 2 of the Acts of the General Assembly of 1982 and are protected by lines 26 through 28 on page 537.

15. Subtitle 14 -- Staff and Services -- Accounting,

Security, and General Services.

Title 2, Subtitle 14 contains 3 parts.

Part I contains miscellaneous provisions that relate to services, including staff.

Present Art. 40, § 4 lists the officers of a session who must attend the next session and provides for their compensation and generally prohibits compensation of any other officers.

The Commission noted that the present mileage rate of 10 cents was set by Ch. 400, Acts of 1884. In accordance with practice, reference to the Standard State Travel Regulations is substituted. See lines 18 through 22 on page 93.

However, it was further suggested that, due to the continuity of employment, the provisions may be obsolete. Separate legislation, therefore, would repeal SG § 2-1405.

Present Art. 40, § 4B provides for the status of permanent part-time legislative employees employed by "a member of the House ... or the office of the assistant to the President ... and Speaker". This partially obsolete list of employers also does not reflect all of the employees who, in practice, are covered by present § 4B. Therefore, in SG § 2-1403, the general reference "employed by the General Assembly" is substituted for the list. See lines 33 through 40 and lines 1 through 3 on pages 91 and 92.

Subtitle 14, Part II contains the statutory provisions for the Legislative Accounting Office.

These provisions include the requirements for reimbursements of members and direct payments for legislative expenses.

The Commission noted that the present statutory provisions do not reflect budgetary practice, since the provisions seem to limit use of the General Legislative Expense Program to reimbursements and seem to require only direct payment of certain enumerated expenses. A separate bill would conform SG § 2-1411 to the budgetary practice.

Subtitle 14, Part III provides for the Legislative Security Force, established under present Art. 40, § 103.

In SG § 2-1414(d), the responsibility of the Force is clarified. See lines 34 through 38 on page 96.

16. Subtitle 15 -- Legislation.

Title 2, Subtitle 15 contains the statutory provisions that relate to legislation. However, numerous provisions of the Md.

Constitution and Senate and House Rules also apply and in some instances, supersede obsolete Code provisions.

The statutory provisions are arranged in chronological order.

Subtitle 15 is divided into 2 parts, to reflect that, through return on final passage, the statutory provisions apply to bills and joint resolutions but after return on final passage, the statutory provisions apply only to bills.

Present Art. 40, § 43 provides for prefiling of legislation.

The revision, in SG § 2-1502, clarifies that prefiling contains 2 distinct steps -- first, a request for the preparation of legislation and second, a directive to file that legislation.

Since present Art. 40, § 43(a) contains an obsolete requirement for a written "outline or summary" of the legislation to be provided with the directive to file, the requirement is deleted. See lines 14 through 27 on page 99.

Present Art. 40, § 43(b) also requires a "PF" series. This obsolete requirement also is deleted.

Separate substantive legislation addresses additional provisions of SG § 2-1502.

Present Art. 40, §§ 63 through 66 and 68 through 70A set forth the requirements for the fiscal notes that accompany legislation.

It was pointed out to the Commission that several of these present sections do not reflect practice. For example, present Art. 40 § 65 provides for the preparation of a "waiver", whenever legislation does not affect State expenditure and revenues. The revision deletes the provisions for this waiver, since, in practice, the note merely states that there is no impact. See lines 15 through 24 on page 104. Note, however, that separate legislation has been prepared to address several other provisions.

Subtitle 15, Part II contains the statutory provisions for procedures after the return of a bill on final passage.

Several of these provisions are derived from present Art. 41, §§ 45 and 46. However, these statutory provisions predate the extensive Constitutional amendments enacted by Ch. 883, Acts of 1974. Therefore, the revision of present Art. 41, §§ 45 and 46 reflects the requirements of the Constitution and the Senate and House Rules, as reflected in practice.

The revision is discussed extensively in the revisor's notes to SG §§ 2-1509 through 2-1512 on pages 105 through 109, and this report notes only some of the major problems.

Md. Constitution, Art. III, § 30 suggests and the Senate and House Rules specifically state that the President and the Speaker affix the State seal to bills. SG § 2-1509(a) preserves this responsibility but, by use of the words "shall have the State seal affixed", reflects that this clerical duty is performed by the Secretary of the Senate or the Chief Clerk of the House.

In accordance with Md. Constitution, Art. III, § 30 and the Senate and House Rules, SG § 2-1509(a) requires presentment by a presiding officer. However, SG § 2-1509(b) reflects that, particularly after adjournment, presentment usually is effected by the Secretary of the Senate or the Chief Clerk of the House.

Present Art. 41, § 45 enables the Governor to appoint a designee for presentment of the bills, but only "during the session". This limitation is deleted, in SG § 2-1510, since, due to the Constitutional requirements for action within a set time after presentment, most bills are presented after the session, and the designee is most often used then.

Present Art. 41, § 46 provides for the delivery of bills to the Secretary of State and includes "bills which fail to become law through [the Governor's] refusal or failure to approve the same". This obsolete language does not reflect that Md. Constitution, Art. II, § 17 now requires a veto and otherwise results in a bill becoming law. Therefore, SG § 2-1511(a)(3) requires delivery of vetoed bills.

Present Art. 41, § 46 also requires the Secretary of State to keep a record of the delivered bills. Again, to conform to Md. Constitution, Art. II, § 17, a reference to vetoed bills is substituted for the reference to bills "which failed to become law". Also, because Md. Constitution, Art. II, § 17 requires action within a certain number of days after presentment, a provision is added for recordation of the date of veto.

Present Art. 41, § 46B requires officials in the Executive Branch to give notice about action taken under a joint resolution and requires the notice to be given on or before October 1 of the year in which the resolution is adopted. The Commission has been advised that, normally, a resolution sets the time for notice. Separate, substantive legislation has been prepared to conform SG § 2-1516 to this practice.

Present Art. 41, § 82 requires delivery of a certified copy of bills to the Department of Legislative Reference. The Commission has been advised that these copies are not delivered.

Further, present Art. 41, § 82 implies that the Governor delivers to the Clerk of the Court of Appeals the original of bills that become law. In practice, this task is performed by the Secretary of State.

The Commission also noted that the current law makes no provision for the return of vetoed bills, as required by the Md. Constitution, and for the disposition of vetoed bills that are not returned.

Substantive legislation has been prepared to address these problems.

Present Art. 76, §§ 1 through 3 permit the Governor and Attorney General to require the publication of an emergency public general law. Present Art. 76, §§ 4 through 6 require the publication of an emergency public local law. These provisions are revised in SG §§ 2-1515 and 2-1514, respectively. However, the Commission has been advised that these provisions are never used. Therefore, separate, substantive legislation has been prepared to delete these provisions.

Present Art. 76, § 7 requires affidavits as to the publication of a law required under Md. Constitution, Art III, § 54. This present section is deleted as obsolete, since the referenced Constitutional provision has been amended to delete the publication requirement.

Present Art. 76, § 8 provides for construction of references to terms such as "newspaper". Since present § 8 applies to any law, resolution, or court order or decree, § 8 is revised in Art. 1 of the Code. See lines 20 through 40 and 1 through 23 on pages 525 and 526. However, the revision reflects the limitation that was contained in the title of Ch. 904, Act of 1951, which enacted present § 8, but that was not reflected in that section.

17. Subtitle 16 -- Investigations.

Title 2, Subtitle 16 contains the revision of present Art. 40, §§ 72 through 87.

The revision reorders these provisions and makes the changes indicated in the revisor's notes.

A particular problem occurs in present Art. 40, § 85, which indicates that a person "shall be in contempt" for enumerated reasons. This language is revised to indicate that a person "may be held in contempt if the person unjustifiably" does any of the enumerated things. This revision reflects that present Art. 40, § 83(d) provides for "disobedience [constituting] grounds for citation for contempt" and also reflects that constitutional rights preclude punishment for contempt in the event of, e.g., a

justifiable refusal to answer a question. See lines 20 through 30 on page 121.

Present Art. 40, § 82(b) enables a witness to submit questions "relevant to matters upon which there have been questions or submission of evidence". This language is deleted in light of the prerogative of an investigating committee to judge whether the question is "appropriate to the subject matter of the hearing". See lines 3 through 8 on page 125.

18. Subtitle 17 -- Prohibited Acts; penalties.

Title 2, Subtitle 17 contains the provisions derived from present Art. 40, §§ 41, 97 through 102, and 104.

These provisions make it unlawful for a person other than a member to use the electronic voting machine and generally to engage in activities that interfere with the legislative process. These provisions also provide penalties.

Present Art. 40, § 102 provides an exception to a general prohibition against, e.g., firearms in the State House. The exception refers to "police officers or officers of any other state" and, therefore, does not clearly provide for officers of this State and may encompass any officer of another state, whether or not a police officer. To avoid these problems, SG § 2-1702(e)(1) refers to "a law enforcement officer of any state".

C. TITLE 3 -- GOVERNOR AND LIEUTENANT GOVERNOR.

Title 3 of the State Government Article contains the statutory provisions that relate to the Governor and the Lieutenant Governor and that are general in nature. Much of the law that relates to these officers appears in the Constitution. Also, many of the powers of the Governor relate to a specific matter, such as appointment of members of a board. This revision does not attempt to include in this title all of those specific duties.

Title 3, Subtitle 1 adds a new section that refers generally to the Constitutional provisions creating the positions of Governor and Lieutenant Governor.

Present Art. 41, § 15D, which provides for a statutory office of Lieutenant Governor, is deleted as obsolete. This provision was intended merely as an interim provision until consideration of the Constitutional amendment for that office. See the General Revisor's Note at lines 31 through 44 on page 142.

Similarly, present Art. 41, § 15A, which provides for filling a vacancy in the office of Governor is deleted as

obsolete as Md. Constitution, Art. II, § 6 specifies different means.

Title 3, Subtitle 2 contains the provisions of the Maryland Gubernatorial Transition Act.

Present Art. 41, §§ 15G and 15-I clearly limited the provisions of those sections to instances when the Governor-elect is not the incumbent Governor. These provisions are deleted, and, in SG § 3-203, a general provision is added that is applicable to the entire subtitle.

Title 3, Subtitle 3 contains miscellaneous general powers of the Governor.

Present Art. 41, § 15 provides that the Governor is the head of the "Executive Department". Under Md. Constitution, Art. II, § 1, the Governor clearly is the head of the "Executive Branch", and, therefore, in SG § 3-302, the reference to the "Executive Branch" is substituted for the reference to the "Executive Department". However, present Art. 41, § 15 also provides that the Governor shall direct the officers and units in that "Department". Since some entities within the Executive Branch have autonomy, the language "except as otherwise provided by law" is added to modify the statement as to supervisory responsibility.

Present Art. 65, §§ 6 and 7 provide for the militia. These provisions are clarified to reflect that the militia is comprised of a land militia and a naval militia.

Note that the bulk of the provisions that relate to the militia are not included here, but are allocated for revision in a Public Safety Article. The Commission also felt that the other powers of the Governor with respect to emergencies should be revised with the provisions on the militia in a Public Safety Article. However, SG § 3-304 is a new section added to provide a general list of these powers.

Title 3, Subtitle 4 contains the statutory provisions for executive orders.

These provisions are derived primarily from present Art. 41, §§ 15CA through 15CE. However, present Art. 41, § 256-1(c)(2) and present Art. 41, § 256-0(b), as it related to the effective date of an executive order, are included here also.

Present Art. 41, § 48 enables the Governor to affix the State seal to a land patent that the Commissioner of the Land Office gives to the Governor. This present section is deleted since, under § 13-502 of the Real Property Article, the Governor must sign and seal a land patent presented by the Commissioner of

Land Patents, who succeeded to the duties of the Commissioner of the Land Office.

D. TITLE 4 -- COMPTROLLER.

Title 4 of the State Government Article contains the general statutory provisions that relate to the Comptroller. Again, the Constitution contains numerous provisions that govern this office. Also, since many of the duties of this officer relate to specific matters, the provisions that pertain to these matters are not included here.

Present Art. 19, § 2 requires the Comptroller to provide "securities". Since, in practice, the Comptroller has given a surety bond, SG § 4-102 is revised to require a bond.

Also, present Art. 19, § 2 requires the bond "[b]efore entering upon the discharge of his duties". This provision and similar provisions throughout the State Government Article, are revised to require coverage "[w]hile in office".

Present Art. 19, § 8 provides, in part, for the staff of the Comptroller. These provisions include provisions for the Chief Deputy Comptroller and Deputy Comptrollers to be selected from "assistant[s]" and "clerk[s]". In SG § 4-104(b)(1), the general reference to "employees on the staff" is substituted for the present archaic references.

Note that provisions of present Art. 19, § 8 that relate to the powers of the Chief Deputy Comptroller and Deputy Comptrollers are retained in Art. 19 until their revision in the State Finance and Procurement Article. See lines 12 through 49 and 1 through 9 on pages 528 and 529.

Present Art. 19, § 8B provides for an acting comptroller during a temporary inability or unavailability of the Comptroller and sets forth a mechanism for selection of the acting comptroller. These provisions include a statement that the Court of Appeals has exclusive original jurisdiction as to issues arising under present § 8B. Although Md. Constitution, Art. XV, § 5 is the purported basis for present Art. 19, § 8B of the Code, the Commission felt that there were questions as to whether this statutory provision is constitutional. Therefore, consideration is being given to separate legislation to address the constitutional issues.

Only the portion of present Art. 19, § 11 that enables the Governor and General Assembly to inspect the records of the Comptroller is included here. The remaining portion of present §§ 11 will be revised in the State Finance and Procurement Article. See lines 10 through 21 on page 529.

E. TITLE 5 -- TREASURER.

Title 5 of the State Government Article contains the general statutory provisions that relate to the Treasurer. There are, again, numerous constitutional provisions and additional statutory provisions that relate to specific duties.

Those provisions that are included in this title are, in many instances, identical to the provisions of Title 4.

Note that present Art. 95, § 2(b) provides for the Treasurer to "renew" the surety bond on demand of the Governor and specifies that failure to obtain the new bond constitutes "disqualification from office, as authorized in the Maryland Constitution". The Commission was unsure of the intent of this reference to the Md. Constitution, which does not provide for "disqualification".

Present Art. 95, § 6 refers to the Chief Deputy Treasurer as being "qualified to act as successor" when a vacancy occurs. In SG § 5-107, the phrase "acts as Treasurer" is substituted, because Md. Constitution, Art. VI, § 1 provides for the Deputy Treasurer to "act as Treasurer until ... the Legislature shall choose a successor".

Present Art. 95, § 6A provides for an acting treasurer during a temporary inability or unavailability of the Treasurer. This present section contains a provision giving the Court of Appeals exclusive original jurisdiction over controversies under this section. Again, the Commission felt that there were Constitutional problems with this purported grant of authority.

Present Art. 95, § 7 is only partially revised in SG § 5-105. Those provisions of present § 7 that pertain to the power of the Chief Deputy Treasurer and deputy treasurers are retained in Art. 95, for inclusion in the State Finance and Procurement Article.

F. TITLE 6 -- ATTORNEY GENERAL.

Title 6 of the State Government Article contains the general statutory provisions that are currently in Art. 32A and relate to the Office of the Attorney General. There are additional Constitutional provisions. Also, the statutory provisions that relate to specific responsibilities of the Attorney General are not included. For example, present Art. 32A, §§ 12A through 12-I, which provide for representation of State employees and State officers, are revised in Title 12 of the State Government Article.

The current law contains numerous references such as the "Department of Law". In practice and in more recently enacted

Code provisions, the reference "Office of the Attorney General" is used. Therefore, SG § 6-101 defines the term "Office", SG § 6-104(a) creates an "Office of the Attorney General", and, throughout the State Government Article, references to the Office are substituted for present references to the Department of Law. See lines 1 through 4 and 16 through 21 on page 156.

Present Art. 32A, §§ 6 through 8, 11, and 12E contain provisions that relate to the staff of the Attorney General. These provisions are set out together in SG § 6-105.

Present Art. 32A, § 8 provides, in part, that "assistants" are allowed "traveling and other expenses". To reflect practice, specific reference is made to the Standard State Travel Regulations.

Present Art. 32A, § 8 also provides that the papers of the Office be filed there "permanently". The Commission noted that it was unsure whether this requirement was intended to preclude the transfer of unneeded documents to the Hall of Records Commission. Substantive legislation has been prepared to permit this transfer.

Present Art. 32A, § 9 requires the State Law Library to provide the Attorney General with certain books such as the Maryland Reports. The enumeration of books did not include reference to the Maryland Appellate Reports. The Commission believed that this omission resulted because present § 9 was enacted before the creation of the Court of Special Appeals and, therefore, added a reference to the Appellate Reports.

Present Art. 32A, § 9 further provides that title to these books remains in the State. The Commission retained this requirement in SG § 6-109(b) even though it was felt that title would remain in the State in any event.

G. TITLE 7 -- SECRETARY OF STATE.

Title 7, Subtitle 1 of the State Government Article contains the general statutory provisions that relate to the Secretary of State. Again, Constitutional provisions and specific statutory provisions appear elsewhere.

Present Art. 41, § 46A requires that each interstate compact be kept in the Office of the Secretary. In SG § 7-104, the limitation "into which the State enters" is added. However, the Commission was advised that the individual who enters into the compact does not necessarily forward the document to the Office. The Commission also was advised that amendments to compacts are not necessarily forwarded to the Office. Finally, the Commission also noted that many agreements between states do not fall within the Constitutional term "compact", although the agreement may

have wide spread effect. Separate substantive legislation has been prepared to address these problems.

Present Art. 41, § 84 provides, in part, that a copy of a gubernatorial document may not be provided without the approval of the Governor. This restriction is deleted as obsolete. The provision was enacted in 1853 and, the Office of the Secretary advises, is never used. This deletion is consistent with the requirements of present Art. 76A, §§ 1 through 8, which now appear in Title 10, Subtitle 6 of the State Government Article.

Present Art. 41, § 86 requires the Secretary of State to perform certain duties with respect to civil officers, including sending the commission to the "clerks of the circuit courts". SG § 7-105(a)(2) is revised to reflect that, by law, some officers qualify before individuals other than clerks of court.

Present Art. 41, § 87 enables the Secretary of State to certify to the "character and qualification" of an officer in the manner of a clerk of court. Since, under Art. 17, § 72 of the Code, a clerk may certify only as to qualification, the present reference to "character" is deleted. See lines 39 through 41 and 1 through 3 on pages 166 and 167.

Present Art. 41, § 89 refers to an "assistant" to the Secretary. This provision is revised, in SG § 7-102, to refer to the "Assistant Secretary". See lines 6 through 13 on page 165.

Title 7, Subtitle 2 contains the provisions that create the Division of State Documents, provide for the administrator of the Division, and relate generally to the operation of the Division. These provisions are derived from present Art. 41, §§ 131B through 131D and portions of §§ 256B through 256T. However, the portions of §§ 256B through 256T that specifically relate to regulations now appear in Title 10, Subtitle 1 of the State Government Article. Also, miscellaneous provisions, such as the part of present Art. 41, § 256-O(b) that relates to executive orders, appear elsewhere in the State Government Article.

Present Art. 41, §§ 256C, 256G, 256N, and 256-O contain provisions that relate to the content of the Code of Maryland Regulations. Present Art. 41, §§ 15C(b), 256F, 256N, and 256-O contain provisions that relate to the contents of the Maryland Register. These provisions are revised together in SG §§ 7-205 and 7-206, respectively.

Each of the revised sections clarify that the Code of Maryland Regulations and the Maryland Register contain the "text of" the enumerated documents.

Present Art. 41, § 256-I(f), in stating requirements for submission of a notice that is to be published in the Maryland

Register, refers only to notice of the date of a hearing. However, present Art. 41, § 256P, in stating the effect of notice, refers to the date of a hearing or the date for termination of an opportunity for a hearing. In SG § 7-214, the references to termination of the opportunity for a hearing are revised to apply both to the requirements of submission of a notice and its effect.

Present Art. 41, § 256M-1 provides for the effect of errors in publication. Present § 256M-1(c) contains a severability provision, which refers to the "remaining valid provisions" being, by operation of law, invalid. The revision in SG § 7-218(b) avoids this nonsequitur.

Present Art. 41, § 256N provides for inclusion of a certification of the administrator as to the content of the Code of Maryland Regulations, including its permanent supplements, and the content of the Maryland Register. However, present § 256N specifies, only with respect to the certification in the Register, that the certification is "conclusive evidence". The Commission is unsure why the certification as to the contents of the Code of Maryland Regulations also is not conclusive evidence. Compare SG §§ 7-205(c)(1) and 7-206(b).

Present Art. 41, § 256S provides for the validity of regulations adopted before October 31, 1974, which was the date on which the State Documents Law became effective. This provision may have continuing validity and, therefore, is preserved in the Session Laws.

Present Art. 41, § 256T states that the short title for §§ 256B through 256T is the "State Documents Law". In light of the revision of many of the provisions of this Law in Title 10, Subtitle 1, together with provisions of the Administrative Procedure Act, the short title is deleted.

H. TITLE 8 -- ORGANIZATION OF EXECUTIVE BRANCH.

Title 8 of the State Government Article contains the statutory provisions that relate to the general organization of the Executive Branch of the State government.

Title 8, Subtitle 1 contains the provisions for the Governor's Executive Council. While the provisions appear primarily in present Art. 41, § 44, 3 of the members are mentioned in Art. 70B, § 4(a)(15) and ED §§ 2-303(d) and 12-104(b)(4). In SG § 8-103, these 3 members are added to the list of members.

Title 8, Subtitle 2 contains the enumeration of the principal departments and general provisions that apply to all principal departments.

However, as noted in the General Revisor's Note to Subtitle 2, several present provisions seem applicable to all of the principal departments but are, in fact, negated elsewhere.

For example, present Art. 41, § 3C states that "[u]nless otherwise provided by law", each principal department has a board of review. Since only 4 of the 13 departments have a board of review, present § 3C is deleted. Therefore, the statements that expressly exempt 6 of the departments from present § 3C also are deleted. See, e.g., lines 1 through 29 on page 531.

Title 8, Subtitle 3 contains miscellaneous provisions that relate to the organization of the Executive Branch.

These provisions include the statutory authority of the Governor to effect a reorganization. However, language is added, in SG § 8-301, to reference the Constitutional powers under Md. Constitution, Art. II, § 24.

The revision also clarifies the respective authority of the Governor and the secretaries of the principal departments. See SG §§ 8-301(b)(3) and 8-302.

Present Art. 41, § 3A(c) states that, by "January 1, 1974", the secretary of each principal department and the head of each other Executive Branch unit must file an organizational chart and then annually file a current chart. The continuing duty to keep the chart current suggests that present Art. 41, § 3A(c) is not intended to apply only to units that existed on July 1, 1974. Therefore, SG § 8-305 is revised to apply to a unit, whether or not the unit existed on July 1, 1974.

Also, present Art. 41, § 3A(c) provides for a submission of the revised chart to the General Assembly and to the Department of Legislative Reference. The Commission believes that this chart is treated as a "report", for purposes of present Art. 40, § 51 -- i.e., copies are filed with the Department and unless a member asks for a copy or the presiding officers authorize distribution to the members, copies may not be given to an individual member. Therefore, SG § 8-305 is revised to limit distribution.

Present Art. 41, § 14H requires registration by any body that is in the Executive Branch of State government but does not receive a specific appropriation. The Commission has been advised that, while these bodies register, the information is never used. Therefore, separate legislation would repeal SG § 8-306.

Present Art. 41, § 15C(c) allows the creation of interdepartmental task forces "[n]otwithstanding any other provision of [that] article". SG § 8-301(c)(1) refers to a "law

that relates to the organization of the Executive Branch", since, in light of the revision, present Art. 41 is split. The revisor's note emphasizes, however, that the substituted language is intended to reflect the scope of the present reference to Art. 41 and that no substantive change is intended.

Title 8, Subtitle 4 contains the provisions of the Maryland Program Evaluation Act.

As originally enacted, the Program Evaluation Act provided for the evaluation of numerous units of the State government. However, 1982 amendments also authorized evaluation of programs and units selected by the Legislative Policy Committee. Present Art. 41, § 485(b) and (d) defines, respectively, "[b]oard" and "[g]overnment activity", to distinguish between the authority for evaluation.

In SG § 8-401(e), the term "governmental activity" is defined to refer to programs and other functions of the State government. The undefined term "unit" is used throughout this subtitle as the term is used elsewhere in the State Government Article. Therefore, cross-references are used to preserve the distinction that the present law makes through use of the 2 defined terms.

Present Art. 41, § 486(c) provides for the evaluation of the Board of Electrical Examiners and Supervisors. Since the State allowed this board to expire in 1983, reference to the board is deleted. However, note that Baltimore City amended the public local law to make this board a city unit.

Present Art. 41, § 486(d) lists the units that are to be evaluated by "1983". As previously indicated, this obsolete date is revised as "1993".

Present Art. 41, § 487(e) and (f) provides for the evaluation report on those units for which the statute requires evaluation and on those units for which the Legislative Policy Committee requires evaluation. The Commission noted that the contents specified for these reports is similar but not identical and was unsure whether the differences indicated substantive distinctions or resulted merely from separate enactment.

I. TITLE 9 -- MISCELLANEOUS EXECUTIVE AGENCIES.

Title 9 of the State Government Article contains the statutory provisions that relate to miscellaneous units in the Executive Branch of the State government. Note that most, but not all, of these units are not assigned to a principal department. Note, also, that this title is, by no means, exhaustive of the independent units in the Executive Branch.

To the extent possible, the provisions in this title that relate to the creation and operation of units have been conformed to similar provisions elsewhere. This particularly applies to entities that have a licensing function comparable to units in the Health Occupations Article. See lines 3 through 27 on page 476.

1. Subtitle 1 -- State Lottery Agency.

Title 9, Subtitle 1 is derived from present Art. 88D. Its provisions include those creating the State Lottery Agency, the State Lottery Commission, and the position of Director.

Present Art. 88D, § 2 states generally that the present article is to be implemented through establishment of a lottery. This present section is deleted as obsolete.

Present Art. 88D, § 3(c) defines the terms "State lottery" and "lottery" as synonyms. Throughout Subtitle 1, the term "State lottery" is used consistently and, therefore, the alternative defined term is deleted. Note, in particular, SG §§ 9-123 and 9-124.

Present Art. 88D, §§ 7(b) and 8(j) provide for the adoption of regulations. An examination of these provisions indicates that § 7(b) applied to the initial regulations of the Agency and that, after 1979, § 8(j) applies to any new regulations. SG § 9-110 is revised to reflect the 1979 enactment that transferred rulemaking authority from the Commission to the Director. Therefore, the portions of present § 7(b) that suggest that the Commission may adopt regulations are deleted as obsolete. However, the portions of present § 7(b) that contain standards for regulations are carried forward in the revision, since there is no indication that the Director is not to be subject to the same limitations, in adopting regulations, to which the Commission was subject. See SG §§ 9-110(b), 9-112(c)(2), 9-120(c), and 9-122(a).

Present Art. 88D, § 8(d) specifies that the Director is "secretary and executive officer of the Commission". In SG § 9-107(a), the reference "executive officer of the Agency and secretary of the Commission" is substituted, as more reflective of the current role of the Commission. See lines 13 through 18 on page 221.

Present Art. 88D, § 8(g) states the Director "shall have the power, and it shall be his duty to ... [r]ecommend to the Commission that it suspend or revoke any license issued pursuant to this article or the rules adopted hereunder". This present provision contains several problems. First, it provides no standards for a recommendation as to disciplinary action and, in fact, would seem to require the suspension or revocation of every

license. Second, since the provision refers to a "duty", the provision does not appear consistent with the word "[r]ecommend". Third, the Commission does not have express authority to act on any recommendation. SG § 9-116 is revised to address these problems.

Present Art. 88D, § 8A, which provides for a State Lotto Game and automatically terminates its provisions after distribution of the revenue from the games, would expire on or shortly after the enactment of the State Government Article. Therefore, present § 8A is transferred to the Session Laws.

Present Art. 88D, § 24 provides for the Agency to issue State premium savings bonds that have interest payable under a random system. This present section was enacted in 1974 but has never been implemented. Therefore, with the concurrence of the Senate Constitutional and Public Law Committee and the House Constitutional and Administrative Law Committee, these provisions are deleted. Also, present Art. 27, § 371B, which exempts these bonds from the prohibition against lotteries, is deleted.

2. Subtitle 2 -- Commission on Uniform State Laws.

Title 9, Subtitle 2 contains the laws that relate to the Commission on Uniform State Laws, which currently appear in Art. 41, §§ 153 and 154.

Under Part IV. B. of this report, the use of the title "Commission on Uniform State Laws" is discussed.

Under present Art. 41, §§ 153 and 154(e), it appears that the Commission must submit 1 report to the General Assembly at its regular session and 1 report to the Governor before each regular or special session. SG § 9-206(b)(1) reflects that, in practice, the Commission reports once, before each regular session.

Present Art. 41, § 154(a) refers only to "uniform acts". Since, in practice, the National Conference designates some acts as "model acts", in SG § 9-206(a)(3), a reference to "model acts" is added.

3. Subtitle 3 -- Office of Minority Affairs.

Title 9, Subtitle 3 contains the statutory provisions for the Office of Minority Affairs, which currently are codified in Art. 41, § 483.

As previously noted in Part IV. A. of this report, 2 definitions in present Art. 41, § 483(a)(2) and (4) are merged into a single defined term in SG § 9-301(c).

Also, preferred terms that refer to specific groups of "minority person[s]" are substituted. See lines 10 through 22 on page 244.

Present Art. 41, § 483(a)(3) defines "minority business enterprise". Since this present definition contains numerous substantive provisions, present § 483(a)(3) is revised, in SG § 9-305(a), as a substantive limitation.

4. Subtitle 4 -- Commission on the Capital City.

Title 9, Subtitle 4 is derived from present Art. 41, § 360 and provides for the Commission on the Capital City.

Present Art. 41, § 360(b) contains ambiguous language as to the membership of the Governor. This language is clarified in SG § 9-403(a)(2)(i). See lines 26 through 34 on page 250.

Present Art. 41, § 360(g)(1) suggests that the inventory of current land uses is to be made as part of the study of landmark resources. SG § 9-406(a)(2)(i) clarifies that the inventory is not limited to uses of landmark resources. See lines 21 through 26 on page 253.

5. Subtitle 5 -- State House Trust.

Title 9, Subtitle 5 contains the revision of present Art. 41, §§ 407 and 408, which provide for the State House Trust.

Present Art. 41, § 407(a) refers to "associates". SG § 9-503(b) clarifies that reference means an "associate member".

Present Art. 41, § 407(c) requires the Trust to retain a consultant, to prepare drawings as specified in present § 408(c). These requirements are carried forward in SG § 9-506(a) and (d). However, the Commission was advised that, at this time, the Trust does not have a consultant, since the specified duties have been carried out. Rather, the Trust engages a consultant when services are needed. Therefore, the Commission suggested that SG § 9-506 might authorize, rather than require, this consultant.

6. Subtitle 6 -- Government House Trust.

Title 9, Subtitle 6 contains the provisions that relate to the Government House Trust. Those provisions currently appear as Art. 41, § 408A.

7. Subtitle 7 -- Council on the State Capital.

Title 9, Subtitle 7 contains the provisions for the Council on the State Capital that currently appear as Art. 78A, § 14D.

Under present § 14D(c)(2), the Council represents the State under leases executed with respect to Paca House and Paca Gardens. Present Art. 41, § 181E(1) and present Art. 78A, § 14A, which are partially redundant and no longer need to be codified, are transferred to the Session Laws. See lines 1 through 13 on page 265.

8. Subtitle 8 -- War Memorial Commission.

Title 9, Subtitle 8 contains the provisions that relate to the War Memorial Commission and that are codified as present Art. 65, §§ 78 through 82.

Under present Art. 41, § 231B, the War Memorial Commission is a unit in the Department of General Services. SG § 9-802 is revised to reflect this statutory placement.

The Commission is responsible for the management of the War Memorial Building, in which the State is supposed to hold one-half interest.

Although present Art. 65, § 82 directs Baltimore City to convey this interest to the State, it appears that the City has not complied with the directive, which was enacted by Ch. 350, Acts of 1951.

Therefore, Section 10 of this Act contains an uncodified provision that preserves this directive, and the statutory provision in present Art. 65, § 65 is deleted. See lines 8 through 10 on page 268 and lines 21 through 23 on page 534.

9. Subtitle 9 -- Veterans.

Title 9, Subtitle 9 contains the statutory provisions for the Maryland Veterans Commission and the Maryland Veterans' Home Commission.

Title 9, Subtitle 9, Part I is new. The present law does not contain a generally applicable definition of the term "veteran". Therefore, in SG § 9-901 a generally applicable definition is added.

This definition replaces, e.g., Art. 96 1/2, § 5, which for purposes of that present section, defines "veteran" to mean an individual who "served on active duty in time of war, campaign or expedition, in the Army, Navy or Marine Corps ... and who has received an honorable discharge". This present definition, thus, excludes individuals who serve in the Air Force.

The new definition is patterned after federal law. The limitation "has an honorable discharge" is added throughout Subtitle 9 when the present law clearly imposes this limitation.

Title 9, Subtitle 9, Part II applies to the Maryland Veterans Commission.

Present Art. 96 1/2, § 3(a) provides for the staggered terms of the members of the Commission. In SG § 9-907(c)(2), standard language is used to carry forward the stagger that exists as of October 1, 1984. However, as lines 10 through 35 on page 272 indicate, the stagger created by statute and used in practice differ.

Provisions of present Art. 96 1/2, §§ 3(c), 4, and 6 provide for a Veterans' Relief Fund. The Maryland Veterans Commission has indicated that the last appropriation to this fund reverted to the General Fund on August 8, 1973. Therefore, the provisions that relate to the Relief Fund are deleted. See lines 29 through 35 on page 275.

Present Art. 96 1/2, §§ 5 and 6 impose on the Commission and its Director certain duties with respect to claims of veterans and their dependents and specifically refer to presenting the claim "to the proper federal authorities and agencies", to prosecuting the claims with the "United States Veterans Administration and other federal agencies", and to keeping contact with the "United Veterans Administration". In SG § 9-912, reference to "appropriate governmental unit[s]" is substituted to encompass the practice of the Commission to monitor claims with local and State units.

Present Art. 96 1/2, § 6 provides for the position of "State Service and Executive Officer". In practice, this official is known as the "Director". Therefore, throughout Part II of this subtitle, the term "Director" is used.

Present Art. 96 1/2, § 6 further provides that the Commission is to keep a registry of the graves of individuals who "served in the military or naval forces ... in time of war". The slightly broader defined term "veteran" is substituted for this present reference, since, in practice, the Commission keeps a registry of all veterans buried in the State.

Present Art. 96 1/2, § 7 requires the Commission to have a principal service center in Baltimore City and additional services centers throughout the State. Present § 7 specifies that the Commission try to use "rent-free public buildings provided by the State of Maryland, or any political subdivision thereof, or in rent-free private buildings." Thus, present § 7 seems to preclude the use of federal buildings, although, in fact, the principal service center and other centers are located in rent-free space in federal buildings. Therefore, in SG § 9-911, the present limitation is deleted.

Title 9, Subtitle 9, Part III contains the provisions for

the Maryland Veterans' Home Commission, which currently appear in Art. 96 1/2, §§ 51A through 62.

This Commission was created to establish, operate, and manage a Veterans' Home. Since the Commission has acquired the property for the Home, numerous present references to acquisition are deleted. See, e.g., lines 6 through 10 on page 282.

Present Art. 96 1/2, § 54 prohibits compensation, but is silent with respect to reimbursement for expenses. In practice, the members of the Commission receive reimbursement in accordance with the Standard State Travel Regulations. This practice is reflected by the addition of a specific provision authorizing reimbursement under those regulations. See lines 30 through 35 on page 285.

Present Art. 78A, §§ 42 through 45 provides for a Maryland Veterans Housing Commission. Since the Governor dissolved this Commission on March 27, 1950, these provisions are deleted. See lines 24 through 29 on page 292.

J. TITLE 10 -- GOVERNMENTAL PROCEDURES.

Title 10 of the State Government Article tries to consolidate the numerous statutes that dictate generally the procedures for operation of the State government. This title contains 7 subtitles, including a subtitle on regulations, contested cases, declaratory rulings, licensing, meetings, records, and reorganizations.

The revision of Title 10 entailed the greatest amount of reorganization of the current statutory provisions, for several reasons.

First, the Administrative Procedure Act, which is codified as present Art. 41, §§ 244 through 256A, applies to 4 subject matters -- regulations, contested cases, declaratory rulings, and licensing.

Second, the State Documents Law, which is codified as present Art. 41, §§ 256B through 256T, contains provisions that generally provide for the publication of the Code of Maryland Regulations and Maryland Register, but also contains provisions that relate to specific subject matters, such as adoption of regulations and publication of notices with respect to procurement contracts.

Third, the provisions of Arts. 54 and 76A that relate to recordkeeping and meetings generally apply to both State and local units.

With respect to the Administrative Procedure Act, the

revision separates the provisions that relate to a specific subject matter, so that each subject matter has its own subtitle.

Those subtitles contain, also, the generally applicable provisions of the Administrative Procedure Act. For example, by definition of the term "agency" in present Art. 41, § 244(a), the scope of the Administrative Procedure Act is limited to certain multicounty units and to those units of the State government that are not excluded from the definition.

This present definition is restated, as a substantive limitation, in each of the 4 subtitles. See §§ 10-120, 10-202, 10-302, and 10-402. Note, however, that several of the entities excluded under present Art. 41, § 244(a) no longer exist. Therefore, reference is made to the successor unit.

Present Art. 41, § 245 requires each agency that is subject to the Administrative Procedure Act to adopt regulations to govern procedures under the Act. In SG § 10-122, this provision is repeated. Both of these revisions clarify that a reference to forms requires that "related" forms and instructions for completing those forms must be adopted with the regulation.

Present Art. 41, § 256A provides for the standing of a political subdivision and its instrumentalities in a matter under the Administrative Procedure Act. This provision is repeated in SG §§ 10-121, 10-203, 10-303, and 10-403 and, in each instance, is clarified to reflect that a body is not, e.g., a party by operation of law, but must have standing and elect to be a party.

Other generally applicable provisions of the Administrative Procedure Act are repeated in each of the first 4 subtitles.

The Commission realized that the division of the Administrative Procedure Act would result in some repetition of its provisions. However, the Commission felt that, sometimes, a unit had been excluded from the definition of "agency" so as to exempt the unit from the provisions on contested cases and, thus, unintentionally excluding the unit from the other provisions.

With respect to the State Documents Law, a similar division has been made. The general provisions on publication appear in Title 7, Subtitle 2 of the State Government Article, and the specific provisions are allocated by subject matter. Thus, the provision on the effective date of an executive order appears in Title 3, Subtitle 4 of the State Government Article. The numerous provisions on regulations appear in Title 10, Subtitle 1 of the State Government Article. The provisions on notices of procurement contracts are retained in Art. 41, until revision in the State Finance and Procurement Article.

As to the allocation of provisions not included in Title 10,

Subtitle 1, see the General Revisor's Note at lines 4 through 36 on page 315.

Finally, with respect to some provisions of Arts. 54 and 76A, a similar division is made. Thus, Title 10, Subtitles 5 and 6 contains a revision of those provisions of Arts. 54 and 76A that relate to recordkeeping and meetings of State units. Many, although not all, of these provisions also apply to recordkeeping and meetings of local units. Therefore, Senate Bill 50 creates a new Article 24. Title 4, Subtitle 1 and Title 5 of that Article duplicate the provisions that are revised in Title 10, Subtitles 5 and 6, to the extent that those provisions apply to local units.

1. Subtitle 1 -- Administrative Procedure Act -- Regulations.

The present law that governs the adoption of regulations by units of government includes present Art. 40, § 40A and present Art. 41, §§ 9 and 244 through 256T.

Many of these current provisions contain limitations on their scope. As noted previously, the Commission felt that some of these limitations resulted because the present law is so diversified and because the contested case portion of the Administrative Procedure Act tends to affect the other subject matters. The Commission hoped that, by consolidating all of the provisions for regulations in 1 subtitle, the application of these provisions could be more easily ascertained and, perhaps, made uniform.

Therefore, in Title 10, Subtitle 1 the requirements for adoption of regulations are stated in a chronological order. The present limitations on specific provisions are retained through the addition of sections that define the scope of the several parts of this subtitle.

Present Art. 40, § 40A(f) contemplates the submission of a proposed regulation to the Joint Committee on Administrative, Executive, and Legislative Review. However, as of July 1, 1983, submission is effected through publication in the Maryland Register. Therefore, 2 distinct actions merged. To reflect this merger, reference to submission to the Joint Committee is deleted, except in those cases when a unit seeks approval of emergency adoption. See lines 23 through 49 on page 301.

Present Art. 40, § 40A(g)(1) through (5) sets forth the requirements for emergency adoption of a proposed regulation. The present law uses numerous terms, such as "emergency measure", "emergency request", and "emergency approval". The revision, in SG § 10-111(b), standardizes these references by use of the term "emergency adoption".

Present Art. 40, § 40A(g)(1) refers to an "adopting agency", which the Attorney General has opined to include an "officer". Therefore, the defined term "unit" is used in SG § 10-111(b).

Present Art. 40, § 40A(g)(1) also provides that emergency adoption is authorized only after approval by certain enumerated members of the Joint Committee or, if there is an objection, by a majority of its members. Present § 40A(g)(2) states "[a]pproval may be secured by the committee staff". This proviso is revised, in SG § 10-111(b)(3), to enable the staff to "poll" the Committee, since, in order to determine if there is an objection, the staff does poll the Committee.

Present Art. 40, § 40A(g)(4) authorizes the Committee to establish conditions for the approval, including "a time limit". In practice, the Committee establishes 2 time limits -- i.e., a limit on the time at which the regulation becomes effective and a time limit on the duration of the effectiveness. Therefore, the reference to a "time limit" in present § 40A(g)(4)(ii) is clarified, in SG § 10-111(b)(4)(ii), by the addition of the phrase "on the effectiveness of the regulation".

Present Art. 40, § 40A(g)(4)(ii) also refers to reversion of "the text of a regulation ... to its original language". Since the regulation may be new, in SG § 10-111(b)(4)(ii), reference is made to reversion of "the status of the regulation".

Present Art. 41, § 9 prohibits adoption of a regulation that has not been submitted to the Attorney General for approval. Present § 9, however, does not require approval before adoption. The Commission noted that present Art. 41, § 256R states that publication of a document in the Maryland Register or the Code of Maryland Regulations creates a rebuttable presumption that, with respect to a regulation, the regulation has been approved as to legality.

Present Art. 41, § 244(c) defines the word "rule". As previously noted, the word "regulation" is substituted as the defined term.

Present Art. 41, § 244(c) defines a rule to "includ[e]", e.g., a "standard". The Commission believed that the use of the word "includes" is intended to be illustrative of the form in which a "rule" may be adopted, and is not intended to encompass, e.g., a statement that does not have general application and future effect. Therefore, in SG § 10-101(e), the use of the word "includ[e]" is limited to form.

Present § 244(c) further states that the definition refers to a statement of an "agency", which is defined in § 244(a). The Commission believed that the defined term "agency" is used in present § 244(c) inadvertently, since present § 256B(f)

incorporates the defined term "rule" into the State Documents Law and that Law applies to units that are not "agenc[ies]". Therefore, in SG § 10-101(e), "regulation" is defined as a generic term.

Present Art. 41, § 249 contains a severability provision for regulations. Note that, although § 249 is part of the Administrative Procedure Act, the present section does not seem to be limited to regulations of "agenc[ies]". Therefore, the present section is revised in Title 10, Subtitle 1, Part V -- as a generally applicable provision -- rather than in Part IV, with the other provisions derived from the Administrative Procedure Act.

Present Art. 41, § 256F(b)(3) specifically states that the text of a "proposed" regulation show changes to another regulation by symbols that the Administrator requires. Present Art. 41, § 256F(b)(3) must be read in conjunction with present § 256F(i), which provides for publication of notice of adoption, since the text of the proposed regulation appears in the notice. Therefore, since present § 256F(i) specifically excludes emergency adoption of a regulation, present § 256F(b)(3) also could be read as inapplicable. However, this reading has not been the practice. Therefore, SG § 10-112(c), as revised, applies to proposed regulations and to regulations published after emergency adoption. See lines 27 through 39 on page 303.

Present Art. 41, § 256F(k) requires the notice of adoption to include an estimate of the fiscal impact of a regulation. The Commission noted that, under present Art. 41, § 245A, Administrative Procedure Act "agenc[ies]" also must conduct an evaluation of impact on business. The Commission felt that these requirements might be examined together. See SG §§ 10-112(a)(3) and 10-124.

Present Art. 41, § 256-O(b) provides, in part, that the effective date of a regulation, after its emergency adoption, is the date "indicated on the document". The Division of State Documents indicates that the "document" is the transmittal document of the Joint Committee on Administrative, Executive, and Legislative Review and that units specifically are advised not to include a date in the regulation, since the Joint Committee may change that date. Therefore, in SG § 10-117(b), the reference to the "date that the Committee sets" is substituted for the reference to the "document". See lines 32 through 38 on page 307.

2. Subtitle 2 -- Administrative Procedure Act -- Contested Cases.

Title 10, Subtitle 2 contains those provisions of the Administrative Procedure Act that are generally applicable to

that Act and also those provisions that specifically relate to contested cases.

Present Art. 41, § 244(d) defines "contested case". However, present Art. 41, § 244(f), which defines "licensing" and present Art. 41, § 250A(a), which provides that "provisions of this act concerning contested cases" apply to certain actions on licenses, contain elements that are similar to the definition. Therefore, in SG § 10-201(c), present Art. 41, §§ 244(d) and (f) and 250A(a) are combined.

Present Art. 41, § 244(e) defines "license" to "includ[e]" certain documents. The Commission felt that the enumerated documents are intended to be illustrative of the form of the document and, therefore, SG § 10-201(d) is revised to state, in part, that "'license' means all or any part of permission that ... is in any form, including" an enumerated document.

Present Art. 41, § 251 provides for notice of a hearing and, in part, requires the notice to contain "the matters asserted". For clarity, SG § 10-205(b) refers to the "facts that asserted".

Present Art. 41, § 252A(a) provides for the record of a contested case and present § 252A(b) provides for a transcript of the record. To clarify the interrelationship of these provisions, SG § 10-210 is revised to state that an agency has the duty to "make a record" that includes enumerated items.

Present Art. 41, § 255A provides for the payment of litigation expenses in certain "administrative adjudicatory proceeding[s]". The Attorney General has opined that these proceedings are the contested cases to which Title 10, Subtitle 2 applies. Therefore, the defined term "contested case" is used throughout SG § 10-217.

The Attorney General further opined that present § 255A applies only to a "business" as defined in present § 244(b) and as further limited by the terms of § 255A. Therefore, SG § 10-217(a) incorporates the definition of "business" in § 244(b).

Present Art. 41, § 255A(a)(3) defines "[r]easonable litigation expenses". This defined term is used throughout present § 255A in the context of the expenses that a business may recoup under the present section. However, the substantive provisions of present § 255A allow reimbursement of expenses that are reasonably incurred. Therefore, the present defined term is deleted as misleading in the revision in SG § 10-217.

Present Art. 41, § 255A(a)(4) defines "[a]gency" to exclude an "agency created by general law, which operates less than statewide." This definition evidently is intended to modify the definition of "agency" in present § 244(a), which includes a body

that is created by general law, but does not operate Statewide. Since, however, the present § 255A definition suggests that it applies to an entity created by public local law, the revision in SG § 10-217(b)(1), refers to an agency operating Statewide.

The Commission made additional clarifying changes that are described in the revisor's note in lines 1 through 49 and 1 through 43 on pages 336 and 337. However, the Commission also noted that the revision could not address all of the issues pointed out by the Attorney General in 68 Op. Att'y Gen. (1983) [Op. No. 83-028 (July 1, 1983)].

3. Subtitle 3 -- Administrative Procedure Act -- Declaratory Rulings.

Title 10, Subtitle 3 contains the generally applicable provisions of the Administrative Procedure Act and present Art. 41, § 250, which provides for an interested person to submit a petition for a declaratory ruling and authorizes a unit to issue that ruling.

Present Art. 41, § 250 authorizes a ruling on "the applicability of any rule, order, or statute enforceable by [the unit] to any person, property, or statement of facts." Since, under present § 250, the ruling binds the unit and the petitioner "on the state of facts alleged", SG § 10-304(a) is revised to refer to "a person or property on the facts set forth in the petition". See lines 1 through 7 on page 341.

4. Subtitle 4 -- Administrative Procedure Act -- Licensing.

Title 10, Subtitle 4 contains the generally applicable provisions of the Administrative Procedure Act and present Art. 41, § 250A(b) and (c).

Present Art. 41, § 250A(b) prevents a license from expiring until "the time for seeking judicial review ... has expired without being extended by a reviewing court." To avoid the present suggestion that a court may extend the time for judicial review, SG § 10-404 refers to "any judicial stay of the unit's final action".

5. Subtitle 5 -- Meetings.

Title 10, Subtitle 5 contains a revision of the provisions of present Art. 76A, §§ 8 through 15 that apply to the State and its units. As previously noted, the provisions of this subtitle are reproduced in new Art. 24, §§ 4-101 through 4-110, as enacted by Senate Bill 50, with respect to local units. Therefore, the changes described in this part of this report also apply to those provisions of Art. 24.

Present Art. 76A, § 8(b) contains a parenthetical clause that seems to limit the scope of present § 8(b) to a public body "which exercises legislative ... or quasi-judicial functions". Since, in fact, the parenthetical clause lists all of the functions of a public body, the clause is deleted as misleading in SG § 10-501(b). See lines 14 through 20 on page 347.

Present Art. 76A, § 8(c) refers to the "administration or application" of a law. In SG § 10-501(c), the word "application" is deleted as included in "administration".

Present Art. 76A, § 8(g) defines "public body" to mean "an entity" that consists of at least 2 individuals and is created in an enumerated manner. To avoid making a public body subject to the new State Government Article and new Art. 24, in SG § 10-501(g), a specific reference to a "unit of the State government" is substituted for the word "entity" and, in Art. 24, § 4-101(g), reference is made to an entity that is not a unit of the State government.

Present Art. 76A, § 8(h) refers to the "determination of a contested case to which ... Chapter 1100" applies. Since, the Md. Rules do not refer to a contested case, SG § 10-501(h) refers to "a proceeding before an administrative agency for which Chapter 1100 ... would govern judicial review."

The second sentence of present Art. 76A, § 12(a) states that notice of a closed session shall be "as provided in § 11(b)(2)". Since, the referenced provision provides for a record in the minutes, rather than notice, the present second sentence is deleted. However, since the provisions for enforcement refer to a "violation of § 12", the revision of those enforcement provisions contains a cross-reference to the requirements for inclusion of a record of the closed session in the minutes. See lines 27 through 37 on page 353 and lines 25 through 39 on page 358.

6. Subtitle 6 -- Records.

Title 10, Subtitle 6 contains the provisions of Arts. 54 and 76A that relate to recordkeeping by units of the State government. As previously noted, the provisions that relate to local units are reproduced in new Art. 24, as enacted by Senate Bill 50.

This part of the report discusses changes that are made in the provisions that relate to State units. These changes have been made in provisions for local units. However, many of the provision of this subtitle are derived from present law that clearly applies only to State units.

This subtitle is divided into 5 parts.

Subtitle 6, Part I is a general provision that is derived from present Art. 76A, § 1A. The present section applies both to State and local units, therefore, a comparable provision appears as new Art. 24, § 5-102.

Subtitle 6, Part II is derived from present Art. 54, § 13, which applies only to units of the State government and requires those units to have a form management program.

Present Art. 54, § 13(b)(2)(ii) requires forms to be identified in accordance with a system "to be devised or approved by the records management division". However, present § 13(f)(2) imposes on the Division the specific duty to develop this system. Therefore, SG § 10-606(a)(3) is revised to refer to a "system of the Division".

Present Art. 54, § 13(b)(3) contains an incorrect cross-reference that, therefore, makes the supervisory authority of the Records Management Division unclear. This authority is clarified in SG § 10-605. See lines 29 through 40 on page 361.

Present Art. 54, § 13(e) provides for a plan to be filed "by August 1, 1978" and, thus, does not encompass units created after August 1, 1978. However, since units must file an annual revision, SG § 10-605(b)(2) is revised to provide for units that did not exist in 1978 to file an initial report.

Subtitle 6, Part III is derived from present Art. 76A, §§ 1 through 5A, as they relate to State units. Some of these provisions also apply to local units and those provisions have been repeated in the new Art. 24, §§ 5-101 and 5-103 through 5-117.

Several of the present sections contain references to "this article" -- i.e., Art. 76A. These references seem to be overly broad references that were retained inadvertently after Art. 76A was amended to include more than §§ 1 through 5. Therefore, in several sections of Subtitle 6, Part III, reference to "this Part III of this subtitle" is substituted for the present references to "this article". See lines 10 through 24 on page 365 and lines 36 and 37 and 1 through 6 on pages 390 and 391.

Present Art. 76A, § 1(b) and (d) defines, respectively "[p]ublic records" and "[w]ritten documents". Since the term "written document" appears only in the definition of "public records", these 2 present definitions are merged in SG § 10-611(f).

Present Art. 76A, § 1(b) uses the term "shall include". The Commission believed that this term is intended to address the form of material that constitutes a public record. Therefore, SG § 10-611(f)(1)(ii) is revised so that "including" relates to

form.

Present Art. 76A, § 1(h) defines "person" and includes a "governmental agency". Since this definition is inconsistent with the definition of "person" in SG § 1-101 and with the usual use of the term "person", present Art. 76A, § 1(h) is deleted. See lines 29 through 40 on page 369. However, to preserve the substantive effect of present § 1(h), specific references to a "governmental unit" are added in the revision of present sections in which the word "person" appears. See, e.g., SG § 10-611(b).

Present Art. 76A, § 3(c) lists public records for which a custodian is required to deny inspection. The present subsection applies both to entire records and to types of information in records. To clarify the required denial, SG § 10-616 contains the provisions that relate to specific records and SG § 10-617 contains the provisions that relate to specific information in any record.

Present Art. 76A, § 3(d) provides, in part, that when an application to inspect a record is submitted to an individual and the record is "not in the custody or control" of the individual, the individual must notify the applicant. Since, however, this individual may be the custodian of the record, but not have custody of the record at the time of the application, SG § 10-614(a)(2) refers to the individual not being the "custodian". See lines 16 through 24 on page 372.

Present Art. 76A, § 4A uses the term "personal record", although that term is not defined for purposes of present § 4A. Therefore, in SG § 10-625, the defined term "public record" is substituted. See lines 12 through 23 on page 389.

Present Art. 76A, § 5A provides for an inventory of records that are defined as "personal records". This provision only applies to records of a State unit and therefore, is not included in new Art. 24.

Present Art. 76A, § 5A(c) specifies that a State unit must file a report by "July 1, 1983" and an updated report annually. Again, present § 5A(c) does not take into account units that do not exist on July 1, 1983. Therefore, SG § 10-624(b)(3)(iv) accommodates units that are filing their first report.

Present Art. 76A, § 5A(g) allows access to "nondisclosable" personal records for research. For clarity, SG § 10-624(c) is revised to refer to "personal records for which inspection otherwise is not authorized". See lines 31 through 33 on page 387.

Subtitle 6, Part IV contains the provisions of present Art. 54, § 10, which require each unit of the State government to have

a program for records management.

Subtitle 6, Part V contains the provisions of present Art. 54, §§ 8 through 11A that apply to units of the State government. Comparable provisions for subdivisions now appear in new Art. 24, §§ 5-119 through 5-124.

Subtitle 7 -- Reorganizations.

Title 10, Subtitle 7 is derived from present Art. 41, §§ 5 through 8 and 10 and Art. 54, § 6. This subtitle generally states the effect of abolition of a unit or the transfer of its powers.

Present Art. 41, § 5 generally provides for the disposition of property to the successor or to the Board of Public Works. However, present Art. 54, § 6 provides for the records of an abolished unit to be transferred to the Hall of Records Commission. These conflicting provisions are reconciled in SG § 10-702. See lines 18 through 34 on page 399.

Present Art. 41, § 7 generally continues a proceeding pending before an abolished or superseded unit and provides that the successor completes the proceeding. However, in the case of an abolished unit, there may be no successor. Therefore, in SG § 10-704(b), a reference is added to allow "another unit designated in accordance with law" to complete the proceeding.

Similarly, present Art. 41, §§ 8 and 10 continue the orders, rules or regulations, and obligations of an abolished or superseded unit. In SG §§ 10-705 and 10-706, the limitation "that relates to a transferred function or authority" is added to avoid continuing, e.g., an obligation when there is no successor to carry out the obligation. See lines 13 through 24 and 31 through 35 on page 401.

K. TITLE 11 -- CONSOLIDATED PROCEDURES FOR DEVELOPMENT PERMITS.

Title 11 of the State Government Article is derived from present Art. 78A, §§ 56 through 67, which specify a consolidated procedure for obtaining development permits when the applicant must obtain the permits from more than 1 State unit or from a State unit and a local government.

Title 11, Subtitle 1 contains definitions and general provisions.

Present Art. 78A, § 57(h) defines the term "State agency". To conform to the balance of the State Government Article, the term "State unit" is substituted as the defined term.

Present Art. 78A, § 57A provides for a State permit coordinating council. The Commission noted that many of the provisions contained in other laws that relate to units are not contained in present § 57A. For example, there is no quorum requirement.

Present Art. 78A, § 66(b) provides, in part, that, whenever an application has not been acted on within the prescribed time, the coordinator may set a time for action. The Commission noted that this authority seems inconsistent with present Art. 78A, § 63(e), which provides that inaction by a State unit operates as a grant of a development permit.

Present Art. 78A, § 66(f) excludes from present §§ 56 through 67 a permit that was issued before July 1, 1975 or for which application had been made on that date. This provision is transferred to the Session Laws.

L. TITLE 12 -- IMMUNITY AND LIABILITY.

Title 12 of the State Government Article contains the provisions of the Maryland Tort Claims Act, the provisions that relate to actions in contract against the State, the provisions that relate to representation of a State officer or State employee in an action against the officer or employee, and the provision for payments of settlements and judgments against State officers and State employees.

Title 12, Subtitle 1 is the revision of the Maryland Tort Claims Act, which currently is codified in Title 5, Subtitle 4 of the Court Article, and present Art. 95, § 27(e).

Present CJ § 5-401(c) defines "State" to exclude local entities. Since the word "State" normally would not include these entities, the present definition is merged with the substantive provisions in CJ § 5-402(b) through (d). See lines 4 through 15 on page 433.

Present CJ § 5-401(d) defines the term "State employee", but includes individuals usually classified as State officers. Therefore, in SG §§ 12-101, the term "State personnel" is substituted as the defined term. See lines 30 through 38 on page 431.

Present Art. 95, § 27(e) specifies that the "limits of liability in subsection (sic) 5-403(b) of the Courts Article" do not limit the ability of the Treasurer to provide insurance under the State Insurance Program. The Commission was unsure whether the words "limits of liability" meant the limitations on liability stated in the referenced CJ § 5-403(b), which contains both limitation on and exclusions from liability, or meant to refer to the limitations and exclusions. The Commission

concluded that the reference meant limitations only. Thus, SG § 12-104(c) refers to "limitations on liability under subsection (c)(3) and (4)". See lines 17 through 28 on page 435.

Title 12, Subtitle 2 is derived from present Art. 21, §§ 7-101 through 7-104 and generally precludes the use of the defense of sovereign immunity in certain contract actions against the State and its units.

Since present Art. 21 includes provisions that limit the scope of that article with respect to contracts, present §§ 7-101 through 7-104 are subject to those limitations. Amendments have been prepared to reflect those limitations in Title 12, Subtitle 2 of the State Government Article.

Title 12, Subtitle 3 is derived from present Art. 32A, § 12, in part, and §§ 12A through 12D, and §§ 12E through 12-I. This subtitle is divided into 3 parts.

Subtitle 3, Part I contains a general provision that excepts certain units from the scope of this subtitle.

Subtitle 3, Part II contains the provisions that relate to representation in a civil matter.

Present Art. 32A, § 12C provides generally for the reimbursement of a State officer or State employee who incurs expenses in defending an action or proceeding because the Attorney General declined representation. This present section includes a provision that requires a written special verdict. In SG § 12-308 the provision for the special verdict is limited to the findings of a jury.

Present Art. 32A, § 12D seems to make information that the Attorney General obtains under this subtitle confidential. However, the present section excepts information obtained in the course of an investigation to determine whether to undertake representation. The Commission noted that the only provision under which information would be obtained is the excluded section. In SG § 12-307, the present cross-reference is translated to conform to the revision. However, this section may be ineffective.

Subtitle 3, Part III is derived from present Art. 32A, § 12-I. This section generally prohibits representation of a State officer or State employee in any criminal action or criminal investigation that involves the officer or employee, but permits the Board of Public Works to authorize reimbursement for expenses.

Title 12, Subtitle 4 is derived from present Art. 78A, § 16C.

Present § 16C(d)(1) and (2) defines "State employee" and "State officer". To conform to the revision in SG § 12-101, in SG § 12-401, the 2 present defined terms are merged in a single definition of "State personnel".

M. TITLE 13 -- EMBLEMS; COMMEMORATIVE DAYS; MANUAL.

Title 13 of the State Government Article contains miscellaneous from present Art. 41 that specify the State Seal and its use, specify the State Flag and provide for the display of the State and United States flag, and additional State emblems. The title also includes the provisions for publication and distribution of the State Manual.

Present Art. 41, § 49 enables the Governor to affix the State Seal to a copy of a law that the Clerk of the Court of Appeals has certified. The Clerk has indicated that this present section is never used. However, since the Governor may only have the Seal as required by law a power to have the Seal is retained in SG § 13-104. See lines 13 through 27 on page 459.

Present Art. 41, §§ 78, 78A, and 79B require promulgation of certain commemorative days. In SG §§ 13-401 through 13-403, these provisions are revised to clarify that the promulgation occurs annually.

TITLE 14 -- UNITED STATES.

Title 14 of the State Government Article contains provisions of law that define the relationship of the United States and this State.

This subtitle is derived from provisions of present Art. 96. However, most of the provisions in Art. 96 are decodified by Senate Bill 50.

Under Article I, § 8, clause 17 of the United States Constitution, Congress may exercise exclusive jurisdiction over land if a state has consented to the acquisition of that land. Historically, many states enacted blanket provisions consenting to the acquisition of land for governmental purposes and, thus, ceding jurisdiction with respect to that land.

Maryland enacted provisions authorizing acquisition of land, but, at various times, limited the jurisdiction ceded under those provisions. Therefore, present Art. 96 contains numerous provisions of law that affect the jurisdiction with respect to land acquired while that law was in effect, but no longer effective. As described in the revisor's note to SG § 14-102, these provisions are decodified.

Please note that the Court of Special Appeals and the

Attorney General declined to interpret the effect of later enacted provisions on earlier cessions of jurisdiction. The revisor's note in lines 29 through 44 on page 468 and in lines 1 through 14 on page 470 flag this problem.

The General Revisor's Note to Title 14 describes provisions that consented to the acquisition of specific tracts of property of land and contained jurisdiction provisions for those tracts. To the extent that these provisions are still effective, they have been decodified. However, a few provisions relate to land that has since been returned to the State and these obsolete provisions are deleted.

Present Art. 78A, §§ 26 through 30 enable the Board of Public Works to contract with the United States for payments in lieu of taxes on property under "rehabilitation projects". These present sections are deleted as obsolete, since, while the sections appeared to have general applicability, the legislative history indicates that the present sections related to a specific project. See lines 44 through 46 and 1 through 16 on pages on 473 and 474.

Present Art. 95C, §§ 27 through 33 enable the State to recoup money from unclaimed postal savings accounts. Some money has been distributed under the present sections, but the United States has retained some money to honor outstanding claims. However, in the event of any other distribution, the State could obtain its share under the Maryland Uniform Disposition of Abandoned Property Act. Therefore, present §§ 27 through 3 are deleted.

VII. DISCUSSION OF ARTICLE 24.

As previously indicated, some of the provisions revised in the State Government Article apply both to the State and its unit and to political subdivisions. Those provisions that relate to political subdivisions have been revised in a temporary article, entitled "Political Subdivisions -- Miscellaneous Provisions". These provisions ultimately will be revised in a Local Government Article.

A. TITLE 1 -- DEFINITIONS.

Title 1 of Art. 24 is almost identical to Title 1 of the State Government Article. However, Art. 24 contains provisions that have not been revised and to reflect that, in those unrevised provisions a term may be used in a manner that differs from the definition, the clause "[u]nless the context clearly requires otherwise" is added in Art. 24, § 1-101(a).

Similarly, in Art. 24, § 1-101(b), the language "unless expressly provided otherwise" is omitted.

B. TITLE 2 -- REPORTS.

Title 2 of Art. 24 contains miscellaneous provisions of present Art. 40, §§ 61(e) through (g) and 70B that relate to financial reports that political subdivisions submit to the Department of Fiscal Services and that that Department prepares with respect to subdivisions.

C. TITLE 3 -- REGULATIONS.

Present Art. 41, § 247 requires publication of regulations by "[e]very agency, department, or other governmental body or unit, quasi-governmental body or unit having the authority or power to adopt or promulgate rules or regulations affecting any member of the general public" and further provides that, "[e]xcept for bicounty and multicounty commissions appointed by local governing bodies", publication be effected through the State Documents Law.

Since present Art. 41, § 247 is part of the Administrative Procedure Act, the words "department ... [or] quasi-governmental body" suggests that § 247 has broader application than to just an Administrative Procedure Act "agency".

Also the reference to multicounty units suggests that § 247 is not limited to State units.

However, it should be noted that, the title of Chapter 94, Acts of 1964, which first enacted § 247, only refers to "State agencies".

While Chapter 600, Acts of 1974, amended § 247 to reference the State Documents Law, there is no indication that the Act affected the units to which § 247 applied.

Finally, Chapter 28, Acts of 1979, added the exception for multicounty units. As introduced, Chapter 28 would have limited § 247 to Administrative Procedure Act agencies and subunits of those agencies, but these limitations were struck by amendment.

Therefore, the scope of § 247 may remain unaffected and, thus; in light of the title of the 1964 Act, may apply only to State units.

D. TITLE 4 -- MEETINGS.

As previously noted, Subtitle 1 of this title duplicates Title 10, Subtitle 5 of the State Government Article, except as necessary to apply this title to political subdivisions.

For example, present Art. 76A, § 12 permits a notice of a public meeting to be published in the Maryland Register by a

State unit. This provision is omitted in Art. 24, § 4-106.

Title 4, Subtitle 2 of Art. 24 contains a revision of present Art. 76A, § 2B. Since this present section only applies to 1 county, it is not included in the State Government Article.

Title 4, Subtitle 3 is reserved. Senate Bill 50 transfers, without amendment, present Art. 76A, §§ 16 through 31 to be Art. 24, §§ 4-301 through 4-316.

E. TITLE 5 -- RECORDS.

As previously noted, this title duplicates the parts of Title 10, Subtitle 6 that are derived from present Arts. 54 and 76A, to the extent that those articles apply to subdivisions.

As with the revision in Title 4 of Art. 24, certain terms that relate to political subdivisions are substituted for language that relates solely to units of the State government.

In addition to the sections previously noted as applying only to State units, and, therefore, omitted from this title, present Art. 76A, § 4A, which provides for correction of records, only applies to State records.

Also note that Art. 24, §§ 5-101(f), and 5-107(g)(3) are derived from provisions that apply only to subdivisions and , therefore, are omitted from the State Government Article.

F. TITLE 6 -- CHARLES COUNTY.

Title 6 of Art. 24 is reserved. Senate Bill 50 transfers, without amendment, present Art. 76A, § 6 to this title.

G. TITLE 7 -- UNITED STATES.

Title 7 of Art. 24 is reserved. Senate Bill 50 transfers, without amendment, present Art. 96, §§ 35 and 49 through 51 to this title.

IV. MISCELLANEOUS PROVISIONS.

A. ARTICLE 1.

Art. 1, § 25 is amended to provide for the citation of the State Government Article.

Art. 1, § 28 is added. This section is derived from present Art. 76, § 8. As previously noted, the revised section reflects the title limitation in Ch. 905, Acts of 1941.

B. ARTICLE 15A.

Art. 15A, § 8 is amended to add subsection (h), which is derived from present Art. 41, § 15C(a).

Art. 15A, § 14A is new. This section is derived from present Art. 41, § 245(c).

C. ARTICLE 19.

Present Art. 19, §§ 8, 11, and 25 are amended to delete provisions that have been revised in the State Government Article. The remaining provisions are to be revised in the State Finance and Procurement Article.

Present Art. 19, § 29 is amended to incorporate the provisions of present Art. 40, § 61B(e) and (f).

D. ARTICLE 41.

Art. 41, § 231B is amended to delete the second sentence, which excluded the Department of General Services from present § 3C. That section generally provides that each principal department has a board of review, and, as previously noted, is deleted since only 4 of the 13 departments have a board.

Similar provisions for 3 other departments are repealed by function and enacting clauses.

E. ARTICLE 64A.

Art. 64A, § 9V is added. This section is derived from present Art. 88D, § 8(b).

F. ARTICLE 65.

Art. 65, § 7 is amended to delete provisions revised in the State Government Article and to add a cross-reference to those provisions.

G. ARTICLE 70.

Art. 70, § 14 is added. This section is derived from present Art. 19, § 1.

H. ARTICLE 81.

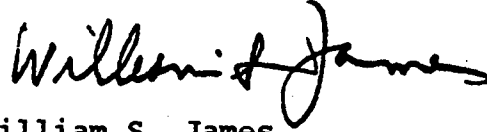
Art. 81, § 8A is added. This section is derived from present Art. 96, § 48.

I. ARTICLE 95.

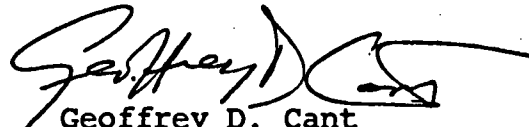
Art. 95, § 7 is amended to delete provisions that are

revised in the State Government Article. The remaining provisions will be revised in the State Finance and Procurement Article.

Respectfully submitted,



William S. James
Chairman



Geoffrey D. Cant
Director

